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No. 90-1912

In the Supreme Court of the United States

October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for Los Angeles County, and the COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

BRIEF AMICUS CURIAE OF THE BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. IN SUPPORT OF PETITIONER

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I. CONSENT FOR FILING

Counsel for the BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (BIA) have received written consent from counsel for Petitioner and Respondents in this case to the filing of an amicus curiae brief by the BIA. Those written consents are being forwarded to the Clerk of the Supreme Court with this Brief.

II. INTEREST OF AMICUS CURIAE

Amicus curiae BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. is a non-profit membership organization whose members produce the great majority of new housing in the Southern California area -- the nation's largest market for residential housing. The BIA and its members are concerned with providing new housing at affordable prices -- an increasingly difficult objective during the past decade.[1]

Section 2(a) of Proposition 13 was passed in 1978 as part of an effort to protect average homeowners from the threat of escalating property taxes. The unique assessment system imposed by Section 2(a), however, produces wide variations in the amounts of property tax paid by similar parcels of real property -- favoring long-time owners and penalizing recent purchasers. Its impact is especially harsh with respect to new homeowners who generally find themselves paying five to ten (or more) times as much property tax as their stay-put neighbors.[2] Eliminating the discriminatory impact of Section 2(a) would, therefore, have a most beneficial effect on the affordability of new housing in California.

In addition to the direct impact of Section 2(a), taxing authorities at all levels of government have attempted to recoup their loss of revenue from Proposition 13, primarily at the expense of new homeowners and others most disadvan-

[1]Today, the percentage of employed Californians who can afford the average-priced home is under 20%, and dropping. California Senate Office of Research, *California Housing: Who Can Afford the Price?* at p. 17 (1990). This article, as well as the articles and documents cited in Footnotes 17, 20, 24 and 25 and in Appendix I, are all contained in the BIA's Request for Judicial Notice of Amicus Curiae filed in this case in the California Court of Appeal.

[2]Similarly, new businesses are faced with large differentials in property taxes as against their established competitors.

taged by Section 2(a). At the state level, in 1983 the Governor and the Legislature imposed the Supplemental Property Tax. California Revenue and Taxation Code §§75 et seq. This new tax imposed the higher assessments called for by Section 2(a) an average of six months sooner than was done under prior practice -- at a cost of several hundred million dollars annually to the property owners already most heavily impacted by Section 2(a).[3]

At the local level, many taxing agencies have imposed new developer fees which, in some areas of California, had reached the $14,000 level for even modest homes as of 1987.[4] For all categories of developer fees, California now leads the nation in the percentage of its communities which impose such fees.[5] These fees are, in turn, largely passed along to the purchasers of new homes and other owners of new construction.[6] In addition, it should be noted that developer fees are flat amounts which impact more heavily, percentagewise, on less costly homes than expensive ones, further worsening the affordability problem which is of particular concern to the BIA.

[3]Following the State example, the City of Los Angeles has recently imposed a new Real Property Transfer Tax imposing an estimated additional $52 million tax burden directly on new homeowners and others acquiring property in the City. Los Angeles, CA. Ordinance No. 16976, effective July 1, 1991.

[4]See Bay Area Council, *Taxing the American Dream: Developer Fees & Housing Affordability in the Bay Area* at p. 3 (May 1988).

[5]See J. E. Frank & R. M. Rhodes, *Development Exactions* at pp. 133-44 (1987 ed.).

[6]See Appellant's (*Nordlinger's*) Responses to Brief of Amicus Curiae Building Industry of Southern California, Inc., filed in the California Court of Appeal, Second District, at pp. 1 & 2, for a more extensive discussion of the impact of Proposition 13 on developer fees.

III. SUMMARY OF ARGUMENT

The *Allegheny Pittsburgh Coal* case left open the issue of the constitutionality of Section 2(a).[7] With the *Macy* challenge now withdrawn, this case presents an ideal opportunity to resolve that issue for both commercial and residential property alike.

The Petition for Writ of Certiorari in this case argues persuasively that the "welcome stranger" assessment procedures mandated by Section 2(a) do not meet an Equal Protection test. Property tax differentials of 1,000% and more, based solely on the date of purchase, cannot pass constitutional muster. Forcing recent purchasers to bear the entire brunt of inflation (and even to subsidize an ever-declining effective property tax rate for long-time owners)[8] is a clear violation of the Equal Protection Clause.

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[7]In this Brief, the following abbreviations are used: The *Allegheny* case refers to *Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989). The *Macy* case refers to *R. H. Macy & Co., Inc. v. Contra Costa County*, No. 90-1603. Proposition 13 was a State Constitutional Amendment, adopted in 1978, which added Art. XIIIA to the California Constitution. Section references [e.g., Section 2(a)] are to Sections of Art. XIIIA. The California Revenue & Taxation Code is abbreviated as R & T Code. Rule references are to the Property Tax Rules of the California State Board of Equalization in Title 18 of the California Code of Regulations. The statutory and rule citations are taken from the Property Taxes Law Guide of the California State Board of Equalization as updated through 1989. The Petition for Writ of Certiorari filed by the Petitioner in this case is referred to as the *Nordlinger* Petition. The Petition for a Writ of Certiorari filed by R. H. Macy & Co., Inc. in No. 90-1603 is referred to as the *Macy* Petition.

[8]For example, in Los Angeles County pre-1978 homeowners paid, in constant dollars, over 60% higher property taxes immediately after the passage of Proposition 13 than they do today. *Nordlinger* Brief at p. 8.

The implementation procedures instituted by the State of California have exacerbated the discriminatory impact of Section 2(a). Special interest groups have repeatedly received exemptions allowing them to receive the same favorable treatment as that accorded to the old owners under the "welcome stranger" system. The provisions for business entities are particularly complex, inconsistent and arbitrary to the point where they defy rational explanation.

In short, the implementation of Section 2(a) has compounded its intrinsic unfairness with an overlay of complex, inconsistent and arbitrary procedures that increase the discriminatory impact of the underlying "welcome stranger" system to the point where its overall unfairness is beyond any rational justification.

IV. ARGUMENT

A. INTRODUCTION

In the *Allegheny* case, this Court expressly left open the question of whether the acquisition value assessment procedure mandated by Section 2(a) of Proposition 13 is constitutional. 488 U.S. at 344, n. 4. This case squarely presents that issue which can only be resolved by this Court. Millions of California property owners have a vital interest in the prompt resolution of that question.

This Court's interest in resolving the constitutionality of Section 2(a) is indicated by the recent grant of certiorari in the *Macy* case, now withdrawn. The instant case presents a far better vehicle for the full consideration of all Section 2(a) issues without attempting, as did *Macy*, to single out for separate consideration a single type of property from the broad sweep of the Section's assessment provisions. Instead, this case presents, for a definitive resolution, the fundamental

question of the constitutionality of Section 2(a) in its entirety.[9]

Moreover, the data presented by this case -- based principally on the most recent records from the office of the Respondent Los Angeles County Assessor -- is significantly more current than was the equivalent data in *Macy*.[10] Indeed, the comprehensive data presented by Petitioner in this case caused the California Court of Appeal, in the decision below, to take judicial notice of the "gross disparities" in the tax treatment of similarly situated properties and taxpayers occasioned by the operation of Section 2(a). *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 1271 (1990).

B. PLAINTIFF'S POSITION IS PERSUASIVE: THE "ACQUISITION VALUE" SYSTEM OF SECTION 2(A) IS INHERENTLY IN VIOLATION OF THE EQUAL PROTECTION CLAUSE.

BIA agrees with Petitioner's basic premise that the so-called acquisition value assessment procedure created by Section 2(a) has produced a situation in which each turn of the inflationary screw creates a new series of property owners less favored than those who purchased in the past but increasingly ahead of those who buy later.[11] The "acquisition value" procedure of Section 2(a), aptly referred to as the "welcome stranger" system, in effect requires that the new owners must bear all the tax burden of inflation. Newcomers to the home buying market, whether young people, immigrants or those previously unable to buy in the market for any other reason, are forced to pay higher taxes even though they had no opportunity to purchase at the time of the previous low assessments. In addition, military personnel, employees of companies with geographic relocation policies, widows and widowers, growing families, empty nesters, divorced persons and many other categories of people are all faced with major property tax increases when they must move for reasons beyond their control.[12] Nor is there any opportunity for the new buyers ever to reach parity with their more stationary neighbors. The Webster County Assessor made at least modest efforts at equalization. *Allegheny*, *supra*, 488 U.S. at 343-44. Section 2(a) has no equivalent mechanism.

The impact of Section 2(a) over the decade it has been in effect is graphically spelled out in the *Nordlinger* Petition and its accompanying exhibits. At pp. 9-15. Differentials in the taxes paid by similarly situated homeowners typically range

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[9]It should be noted that one of the long term effects of Section 2(a), probably unintended, may be to shift a portion of the property tax burden from commercial property owners to residential property owners (because of the faster turnover rate of residential property). Brief in Opposition of Respondent Contra Costa County in the *Macy* case, at p. 24. Such differential impacts upon different types of properties can, of course, only be dealt with by a ruling covering all types of properties.

[10]*Nordlinger* Petition at pp. 6 & 7; *Macy* Petition at p. 4.

[11]It should be noted, however, that Section 2(a) is not consistent in its application of the so-called acquisition value theory. Acquisition value is only applied to post-1975 buyers of real property. Earlier (continued...)

[11](...continued)
buyers all had their values brought up to the 1975 level. Moreover, Section 2(a) also departs from a true acquisition value approach in recognizing declines in value, a common occurrence for commercial fixtures, for example. The Section puts a ceiling on values, but not a floor.

[12]An equivalent occurrence in the business sector impacts the typical commercial tenant with the obligation to pay its pro rata share of any increase in the landlord's expenses, including property taxes assessed against the leased premises. The tenant's share of those taxes may skyrocket due to a change in ownership of the property of which it is not even aware. Sophisticated tenants may currently be in a position to negotiate this issue before signing new leases. However, tenants with leases in force in 1978, many of them long-term, obviously had no such opportunity.

upwards from 1000% and many extreme examples exist.[13] Moreover, unlike the situation in the *Allegheny* case, the lack of any equalizing mechanism in Section 2(a) insures that these differentials will continue to get worse as long as inflation continues. The records in both this case and the previously filed *Macy* case indicate that if current trends continue, *differentials of over 2,000% will be common before the end of this decade.*[14] A system that routinely and necessarily produces such results can hardly be said to square with the Equal Protection Clause.[15]

Finally, Section 2(a) raises, with elemental clarity, the basic issue of whether a 1978 voter majority can impose a constitutional property tax system that permanently shifts an ever increasing share of the property tax burden to future purchasers. This fundamental point was cogently stated by the National Taxpayers Union in its amicus brief in the *Allegheny* case as follows:

> The current owners, who are favorably treated, are currently within the taxing authority and able to participate in the democratic processes that control allocation of the tax burden. The

[13]In this connection, it should be noted that in the study done by the Petitioner, the higher differentials between long-time homeowners and recent buyers tended to be concentrated in the more affluent neighborhoods with the lower differentials occurring most in the more modest neighborhoods, such as the Petitioner's. *Nordlinger* Petition pp. 14 & 15. Thus the wealthier homeowners tended to receive greater benefits under Proposition 13, both absolutely and percentagewise.

[14]See *Nordlinger* Petition at p. 14 and *Macy* Petition at p. 4.

[15]A comparison might be made to a recent land use case, *Nollan v. State Costal Commission*, in which this Court indicated that the Equal Protection Clause prohibits public agencies from forcing some people to bear costs which should, in all fairness, be borne by the public as a whole. 483 U.S. 825, 835, n. 4 (1987).

> group who suffers discrimination are likely to be excluded from political participation in the local taxing authority when the rule is established. In short, reassessing only new purchases pleases the voters at the expense of non-voters (or at least a minority of voters). (At p. 12. Also see the *Macy* Petition at p. 22.)[16]

The NTU brief also characterized the danger thus posed to the California property tax system in the following language:

> The "welcome stranger" method is an unconstitutionally discriminatory vehicle for allocating tax liability, even when the divergence is not extreme. The defect in the reassessment on sale approach is that it consistently biases political decisionmaking. When some taxpayers bear a heavier portion of the community's tax burden than others, the

[16]It should be noted that the revolving door favoritism of Section 2(a) is unlikely ever to be changed by the Legislature or the voters because only a minority of property owners, many of them recent first-time buyers, suffer the maximum discriminatory impact at any one time. See *Nordlinger* Petition at pp. 19 & 20, and also *Macy* Petition at p. 10.

An analogy might be made to the voting rights cases. Earlier decisions of this Court, such as *Colegrove v. Green*, 328 U.S. 549 (1946), upheld the right of local and state legislators to ignore demographic changes and continue the use of highly discriminatory voting apportionments. Eventually, however, in cases beginning with *Baker v. Carr*, 369 U.S. 186 (1962), this Court held that the intrinsic unfairness of using historic boundaries to control present-day voting rights had to give way. Just as this Court refused to allow a particular voter majority to perpetuate its political power, so in this case it should not permit a 1978 voter majority to impose a tax system that permanently fixes the vast majority of the tax burden on others.

benefitted taxpayers have an incentive to support higher tax rates and greater governmental expenditures. They do not bear their full proportional burden; they can free ride at others' expense. (At p. 3.)

C. EXACERBATION IN PRACTICE: LATER AMENDMENTS TO PROPOSITION 13, IMPLEMENTING STATUTES AND REGULATIONS, AND LOCAL ADMINISTRATIVE PROCEDURES HAVE MAGNIFIED THE DISCRIMINATORY IMPACT OF SECTION 2(A).

(1) <u>INTRODUCTION</u>

It might be supposed that the implementation and interpretation of Section 2(a) would have had the purpose and effect of minimizing its discriminatory impact as summarized above. The exact opposite has been the case. The discriminatory effect of Section 2(a) has been repeatedly increased by many of the legislative and administrative actions taken in putting the Section into effect. Its harsh impact has been wholly or partially eliminated for a variety of favored groups leaving those new buyers and builders not so favored to bear an ever-increasing share of the property tax burden.

(2) <u>INEQUALITIES ABOUND IN THE TREATMENT OF BOTH INDIVIDUAL AND BUSINESS PROPERTIES</u>

As originally enacted in 1978, Section 2(a) provided an apparently very simple scheme for the assessment of real property in California. All values were to be rolled back to the 1975 level and remain there (with a maximum 2% annual inflation adjustment) until a "change in ownership" or "new construction" occurred. A change in ownership or new construction triggered a reappraisal (and corresponding new assessment) up to current fair market value. Whatever hope

the authors of Proposition 13, or those who voted for it in 1978, may have had that the procedures under Section 2(a) would remain simple and fair have long since been dashed. Today's implementing provisions are complex and discriminatory with respect to both property held by individuals and the corporate and partnership holdings of business property.[17]

(a) <u>Family and Group Transfers: Discrimination Compounded</u>

Transfers within the immediate family have largely been exempted from the change-in-ownership requirements. Parents may transfer their residences and up to $2,000,000 in assessed value (not current fair market value which may be far higher) of other property to their children without reappraisal (and vice versa).[18] In effect, family homes and family farms (or other equivalent land-owning businesses) can be held in perpetuity without reappraisal.[19]

Another available mechanism for avoiding reappraisal of property to be transferred among less closely related group members is joint tenancy. A transfer of property to one or more joint tenants is a change in ownership and triggers reappraisal. However, if one of the new joint tenants is a

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[17]Many of these provisions are, themselves, of doubtful constitutionality. See Morris, *Proposition 13, Change in Ownership, Constitutional Problems*, Los Angeles Lawyer, at pp. 11, 49-50 (Oct. 1981); Ehrman & Flavin, *Taxing California Property*, §2:11 (1988).

[18]Section 2(g). (Added to Proposition 13 by Proposition 58 in 1986.) Each parent and child has a $1,000,000 exemption. Transfers between spouses are also totally exempt. Section 2(g); R & T Code §63.

[19]The $1,000,000 exemption is not, moreover, limited to family business assets. It applies equally to investment property or any other real estate which may be transferred between parents and children. Macy's counsel characterized these provisions as amounting to the creation of a "landed gentry." *Macy* Petition at p. 11, n. 13.

grantor, there is no reappraisal. R & T Code §65(b). Moreover, the new joint tenants may transfer among themselves without reappraisal as long as the original grantor retains at least part of her/his interest. R & T Code §65(d). Through the use of this device, family (or other group) members can postpone reappraisal for long periods simply by having one or more youthful individuals retain minor interests through a long period of joint tenancy transfers.

Other, if less far reaching, examples of discriminatory constitutional, statutory and regulatory provisions abound.[20]

(b) Transfers Involving Legal Entities: In Addition, Complexity and Arbitrariness

The assessment procedures for transfers of real property held by individuals and legal entities for commercial and industrial purposes is, of course, also grounded on the

[20]See Appendix I, *infra*. Also, it must be remembered that California's property tax system is controlled operationally by 58 County Assessors each of whom is an independent locally-elected official whose budget is set by a locally-elected Board of Supervisors. It is hardly surprising that the same tendency to allow certain favored groups to avoid the harsh reappraisal requirements of Section 2(a) operates at the local level just as it does in Sacramento. For example, in San Diego County the Board of Supervisors refused to provide the Assessor with the funds necessary to equalize the 1978 assessment roll at the 1975 level as required by Section 2(a). The result was that 75% of the homes in San Diego County remained on the 1978 roll (and succeeding rolls) at 1972, 1973 and 1974 values (providing an annual savings to those homeowners of $20,000,000). State Board of Equalization Assessment Practices Survey of San Diego County at pp. 2, 8 & 9 (1980-81). As commented by the Board staff: "The result is that all of the taxpayers of the State of California must contribute to the San Diego County tax deficiency in the form of 'bail out' monies in order for the County to meet its total fiscal responsibilities." at p. 2. Such practices were not unique to San Diego County. See Joint Legislative Audit Committee (Office of the Auditor General), *Post-Proposition 13 Tax Assessment Practices of the Counties in the State of California* at pp. 1-3 (1979).

"welcome stranger" approach -- favoring old established businesses as against their more newly established competitors. Again, numerous special interest exemptions have been added.[21]

The real nadir of the Section 2(a) implementation scheme for business property, however, occurs with respect to the arbitrary and complex treatment of corporations and other legal entities. That treatment is based on two inconsistent theories. Some California Revenue and Taxation Code sections treat the entities as the owners of real property for change-in-ownership purposes (entity theory) and others treat their stockholders, partners and beneficiaries as the owners for such purposes (ultimate owner theory).[22] The result is a set of inconsistent and arbitrary rules which are a trap for the unwary [as well as an opportunity for the sophisticated to use to their special advantage in attempting to avoid the requirements of Section 2(a)].[23]

The vagaries of the current system are extreme. For example, where property is acquired by the acquisition of stock (or other ownership interests) in the entity holding title to the property, only the acquisition of over 50% of the stock by a single individual or entity triggers reappraisal.[24] A group

[21]See Appendix I, *infra*.

[22]See Ehrman & Flavin, *op. cit.*, §2:15.

[23]In *Shuwa Investments Corporation v. County of Los Angeles*, (Los Angeles County Superior Court No. 726-006, now on appeal in the California Court of Appeal, Second District, No. B-056571) only the application of a "step transaction" doctrine prevented the new owner of the Arco Tower in Los Angeles from avoiding full reappraisal after acquisition of that property. (The new owner proceeded in apparent full compliance with the existing change-in-ownership provisions.)

[24]R & T Code §64(c). See Rule 462(j), Pope & Ajalat, *Proposition 13 Section 2(a)*, 54 Cal.St.Bar J. 494, 497-98 (1979), and Steele, *Proposition 13's "Change in Ownership": When May Property be* (continued...)

purchase such as an LBO, however, does not trigger reappraisal as long as no individual in the group owns over 50% of the acquired corporation.[25] Legal entities owning real property may, therefore, enter into an endless chain of under-50% transfers without triggering reappraisal.

At the other extreme are transactions where a tiny change in stock ownership triggers reappraisal of all the real estate held by the corporation involved. In a corporate reorganization, for example, a 1% difference in the stock holdings before and after the reorganization will trigger reappraisal of 100% of the real property held by the reorganized corporation.[26] Similarly, transfers of real property in and out of legal entities are not treated as changes in ownership if the property and the entity are owned in exactly the same proportions. However, under Rule 462(j)(2)(B)(ii), the slightest variation in those proportions will trigger a 100% reappraisal. Equally capricious is the related rule that if 50-50 owners of a single parcel transfer that parcel to an entity, there is no change-in-ownership reappraisal; but if two owners of parcels of equal value transfer them to an entity, both parcels must be 100% reappraised. Rule 462(j)(2)(B)(iii).

[24](...continued)
Reassessed under Article XIIIA of the California Constitution?, part of a Workshop on *Ad Valorem* Property and Transfer Taxes as Applied to Real Estate Transactions, Real Property and Taxation Section of the State Bar of California at pp. 14-24 & 33-39 (June 8, 1989).

[25]A State Board of Equalization staff letter has even opined that there is no change in ownership where a husband and wife each purchase 50% of the shares of a corporation (Letters to County Assessors dated July 15, 1983 and March 5, 1985) -- despite the fact that husband and wife are treated as an entity for the purpose of transfers between them. (See Footnote 18, *supra*.)

[26]R & T Code §62(a); Rule 462(j).

(c) <u>New Construction: Again, Maximum Advantage For Old Owners Plus Arbitrary Distinctions</u>

By its plain terms, the treatment of new construction under Section 2(a) is a fundamental element of its discriminatory impact. All new construction is assessed at current fair market value. The purchaser (or builder) of a new home (or business building) is assessed at today's values. Their neighbors (or competitors) are assessed at historical, acquisition date values.

As with changes in ownership, the concept of new construction has been elaborated and interpreted in a manner favoring existing property owners. The Legislature narrowly defined new construction to include only the new portion of the property (e.g., land retains its old value when a building is constructed on it; and where new construction is done on an existing structure, only the value of the new portion is added to the assessment roll).[27] With respect to remodeling and renovation, only alterations that change the use of the property or improve it to the point of being substantially the equivalent of new are added to the roll -- everything else is considered "maintenance" and is not assessed.[28]

The difficulty of applying amorphous concepts, such as those contained in the preceding paragraph, to a complex commercial society has frequently produced complex and arbitrary applications of the relevant rules, often varying markedly from county to county. As basic a concept as the "date of completion" for multi-year construction projects [the date of reappraisal under Section 2(a)], for example, went

[27]R & T Code §71; Rule 463(a).

[28]R & T Code §70; Rule 463(b).

through years of litigation before being resolved by the Court of Appeal.[29]

V. CONCLUSION

The high level of California property taxes in 1978 was a volatile issue of the first magnitude. Homeowners, in particular, were up in arms as the Legislature procrastinated in providing relief despite the presence of a mammoth State surplus. Howard Jarvis and Paul Gann rode to the rescue with Proposition 13 -- their motel room-drafted home remedy -- which was approved overwhelmingly by the voters in the June election.

The enthusiasm generated by Proposition 13 swept the nation and became the "tax revolt" of the 1980's.[30] Many aspects of the Proposition were imitated around the country. The principal exception has been Section 2(a) which was, and is, unique to California.

Thus, Section 2(a) has been, and remains, aberrational. The Section drew the only dissent in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208 (1978), the case approving the constitutionality of Proposition 13 at the State level. Even the majority opinion in that case sustained Section 2(a) against a facial attack with the comment that the acquisition value "system may operate on a fairer basis" and that its justification is "arguably reasonable." 22 Cal.3d at 235 (emphasis added). The Court

[29]The result is a complex definition that normally produces multiple dates of valuation within a single high-rise office building or similar project. *Pope v. State Board of Equalization*, 146 Cal.App.3d 1132 (1983).

[30]In California itself, the voters adopted the so-called "Gann Limit" establishing a ceiling on expenditures by State and local government based on the post-Proposition 13 spending level of 1979. California Constitution, Article XIIIB (adopted in November 1979).

of Appeal in the instant case, looking at ten years of experience under Section 2(a), specifically found that the disparities created under Section 2(a) were "gross," but felt bound to affirm because of the binding effect of *Amador*. 225 Cal.App.3d at pp. 1271, 1275. The California State Senate, in response to this litigation, appointed the State Senate Commission on Property Tax Equity and Revenue which has recommended a return to an equalized system (in the event that Section 2(a) is held to be unconstitutional in this litigation).[31]

These judicial and legislative reservations are sound. The evidence presented in this case is overwhelming. The "welcome stranger" system does not operate on a "fairer basis;" it has no "reasonable" justification and its current impact is certainly "gross," especially as exacerbated by the complex, inconsistent and frequently arbitrary implementation provisions currently in effect. The system is, in fact, no more and no less than a so far successful effort by old owners to shift the bulk of their property tax burden to future purchasers. The courts would not permit this shift to be done directly, and it should not be permitted in the fancy-dress guise of Section 2(a).

[31]Report of the Senate Commission on Property Tax Equity and Revenue, at p. 4 (1991).

A hearing should be granted in this case and Section 2(a) held to be incompatible with the requirements of the Equal Protection Clause.

Respectfully submitted,

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APPENDIX

APPENDIX I

SELECTED SECTION 2(a) EXEMPTIONS

(Pursuant to Sec. 2(a); R & T Code §§60-69; Rule 462)

A. FAMILY TRANSFERS

(1) Spouse/Exemption: No reappraisal of transfers between spouses. (Section 2(g); R & T Code §63)

This exemption is applied to transfers in accordance with Property Settlement Agreements, even those made pursuant to post-divorce amendments to such agreements. [Rule 462(1)(3)]

(2) Parent-Child Exemption: No reappraisal of parent/child transfers of family homes or parent/child transfers of other property up to $1,000,000 (assessed value). [Section 2(g)]

(3) Couples Living Together Exemption: No reappraisal of transfers prior to 1981. Thereafter such transfers trigger reappraisal. [R & T Code §62(j)]

B. JOINT TENANCY TRANSFERS

(1) Grantor Exemptions: No reappraisal of transfers into joint tenancy where a grantor retains any interest in the transferred property. [R & T Code §65(b)]

(2) Transfers Among Tenants Exemption: No reappraisal of transfers between joint tenants as long as an original grantor retains any interest in the property. [R & T Code §65(d)]

C. HOMEOWNER TRANSFERS

(1) Age 55 and Over Exemption: Homeowners aged 55 and over may transfer existing assessments to new homes under specified conditions. (Section 2(a); R & T Code §69.5)

(2) Leased Home Exemption: No reappraisal of leased homes transferred by the owner-landlord. [R & T Code §62(g)]

(3) Co-op Apartment Exemption: No reappraisal of the transfer of certain publicly-subsidized co-op apartment units. [R & T Code §62(i)]

D. TRANSFERS OF INTERESTS IN LEGAL ENTITIES OWNING REAL PROPERTY

(1) Single Purchaser of Over-50% Interest Reappraisal: The purchase by a single purchaser of over 50% of the stock of a corporation (or other business entity) triggers the reappraisal of the real property held by that corporation. [R & T Code §64(c)]

(2) Under 50% Exemption: Virtually all purchases of 50% or less of the stock of a corporation do not trigger reappraisal of the corporation's real property. [R & T Code §64(a)][32]

(3) Group Purchase Exemption: LBOs and other group purchases of the stock of a corporation do not trigger reappraisal of the corporation's real property. [R & T Code §64(c)]

E. MISCELLANEOUS

(1) Employee Benefit Plans: No reappraisal of most employee benefit plan transactions. (R & T Code §66)

(2) Investment Funds: No reappraisal of purchase of or transfers of the shares of collective investment funds of financial institutions. [R & T Code §62(i)]

(3) De Minimis Interests: Annual transfers of undivided interests of 5% or less and valued at $10,000 or less do not trigger reappraisal. [R & T Code §65.1(a)]

For a more complete listing of the entire spectrum of change-in-ownership provisions as they existed in 1981 see the chart in Pope, *Proposition 13 Change in Ownership: An Administrative Nightmare*, Los Angeles Lawyer (Vol. 4, No. 7), at pp. 40-41 (October 1981).

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[32] For a limited exception to this rule see R & T Code §64(d).